

RESOLUTION NO. 201-20

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA, PROVIDING FOR VIRTUAL ATTENDANCE BY ELECTED AND APPOINTED OFFICIALS AT MEETINGS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND SUSPENDING ANY REQUIREMENT THAT AN IN-PERSON PHYSICAL QUORUM BE PRESENT TO CONDUCT BUSINESS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, on March 9, 2020, Governor Ron Desantis issued Executive Order 20-52 declaring a state of emergency for the State of Florida as a result of Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, on March 13, 2020, Palm Beach County declared a local State of Emergency due to the Coronavirus pandemic, which has been extended in accordance with applicable law; and

WHEREAS, on the same date, a State of Emergency in the City of Delray Beach was proclaimed by the City Commission, which has been extended thirty-five (35) times due to the continued spread of COVID-19; and

WHEREAS, on March 20, 2020, Governor Desantis issued Executive Order 20-69 suspending an in person, physical quorum for local government bodies and providing for the use of communications media technology ("CMT") such as telephonic and video conferencing to conduct business relying on an opinion from Attorney General Ashley Moody suggesting that compliance with the Sunshine Law requires an in-person, physical quorum; and

WHEREAS, in its advisory opinions, the Florida Attorney General has relied upon language in the Sunshine Law declaring all "meetings" of a municipality to be "public meetings open to the public at all times," and language in the Municipal Home Rule Powers Act providing for the requisite vote of a "quorum present" to adopt an ordinance or resolution; and

WHEREAS, even if Florida law were to require an in-person, physical quorum for local government bodies to conduct business (which it does not), the Florida Attorney General has recently acknowledged in AGO opinion no. 2020-03 that local governments can meet without a quorum physically present if "the in-person requirement for constituting a quorum is lawfully suspended during the state of emergency"; and

WHEREAS, Chapter 252, Florida Statutes, and the Municipal Home Rule Powers Act, among other authorities, provide a basis for the City, in its discretion, to lawfully suspend any in-person, physical quorum requirement and to achieve a quorum through virtual attendance during the current state of emergency as declared by Governor Desantis, Palm Beach County and the City of Delray Beach; and

WHEREAS, until the expiration of Executive Order 2020-69, utilizing the City's Meeting Procedures authorizing the use of CMT on May 5, 2020, the City Commission and the various Boards

and Committees of the City had been conducting virtual meetings utilizing CMT (prior to the expiration of EO 20-69) in an effective, safe and secure manner, without unnecessarily exposing either City personnel or members of the public to an increased risk of infection from COVID-19, while ensuring public access and open government in compliance with the Sunshine Law; and

WHEREAS, the virtual meetings conducted by the City Commission and the various Boards and Committees of the City had expanded the ability of the public to participate in, and be aware of, the decision making process of the City to an extent that has not otherwise been possible if the City conducted in-person meetings following the social distancing guidance as well as other measures intended to limit the risk of COVID-19 exposure issued by the Centers for Disease Control and Prevention ("CDC"); and

WHEREAS, since the expiration of Executive Order 2020-69 on November 1, 2020, and in order to protect the health, safety, and welfare of the community by taking action to mitigate the spread of COVID-19 (which the City deems to be an "extraordinary circumstance"), the City wishes to return to meeting virtually and to conduct City business utilizing CMT (without an in-person, physical quorum) during the City-declared COVID-19 public health emergency declared pursuant to Resolution 70-20 dated March 13, 2020, as extended; and

WHEREAS, this Resolution 201-20 is authorized pursuant to the Home Rule powers of the City (s. 2(b), Art. VIII of the Florida Constitution and Chapter 166, Florida Statutes), Chapter 252, Florida Statutes (Emergency Management), any and all other applicable statutes, the City Charter and City's Code of Ordinances, and Resolution No. 70-20, as extended; and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. Based upon the authority cited in Section 3 herein, the City Commission and all appointed Boards or Committees of the City shall conduct business at and through virtual meetings, utilizing CMT in accordance with the rules of procedures promulgated by the City, during the COVID-19 public health emergency declared pursuant to Resolution 70-20, as extended. Even if Florida law were to require an *in-person, physical* quorum be present to conduct business (which it does not), or were to require that the City Commission or any appointed Board or Committee of the City meet at a specific public place (which it does not), such requirements are hereby suspended.

Section 3. This Resolution is issued pursuant to the Home Rule powers of the City (s. 2(b), Art. VIII of the Florida Constitution and Chapter 166, Florida Statutes), Chapter 252, Florida Statutes (Emergency Management), any and all other applicable statutes, the City Charter and Chapter 95 of the City's Code of Ordinances, and Resolution 70-20, as extended.

Section 4. This Resolution shall become effective immediately and shall remain in effect until the earlier of (i) the termination of the City-declared COVID-19 public health emergency; or (ii) the repeal of this Resolution.

PASSED AND ADOPTED in regular session on the ____ day of _____, 2020.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney